**IN THE HIGH COURT OF UTTARANCHAL **
AT NAINITAL.
Criminal Appeal No. 163 of 2001
(Old No. 600 of 1986)

Nand Kishore S/o Harish lal
R/o Resh Rajpura
(Rajendra Nagar)
P.S. Haldwani
District Nainital ... Appellant.

Versus

State of U.P. …Opposite Party

Sri I.S. Mehra, learned counsel for the appellant,
Sri G.S. Sandhu, learned A.G.A. for the State.

Hon'ble B.C. Kandpal,J.

1. This criminal appeal arises out against the judgment and order dated 14.02.1986 passed by IInd Additional Sessions Judge, Nainital in Sessions Trial No. 153 of 1984 State Vs. Nand Kishore convicting the accused/appellant under Section 307 I.P.C. and sentencing him to undergo rigorous imprisonment for a term of two years.

2. Brief facts of the prosecution case are that on 14.03.1983, at 5:30 p.m. when Rajender Prasad @ Pappu was studying in his house, the accused – Nand Kishor was making hue and cry outside his house. Rajender Singh @ Pappu who was busy in study felt disturbance and requested Nand Kishor not to create noise. On this, accused Nand Kishor threatened and through challenge to come outside. When Rajender Prasad came outside, accused Nand Kishor stabbed him with a knife. Further having sustained injuries, the accused ran away from the place of incident.

3. The injured was medically examined by the doctor and the First Information Report was lodged at Police Station Haldwani on 14.03.1983 at 8:55 p.m. The doctor in the medical examination report

found one stabbed wound on the abdominal cavity. The doctor opined that the injury was caused by knife.

4. Initially the case was registered under Section 324 I.P.C. but subsequently in view of the nature of injures, the case was converted to Section 307 I.P.C.

5. The Investigating Officer after investigating the case, submitted the chargesheet under Section 307 I.P.C. After submission of the chargesheet the accused was committed to the court of Sessions and the learned trial court framed the charge under Section 307 I.P.C. against the accused. The accused denied of the charge levelled against his and claimed his trial.

6. The prosecution in order to bring the guilt of the accused to home produced Rajendra Prasad (P.W.1) – injured, Nand Lal (P.W.2) - complaianant and Radhe Lal (P.W.3) eye-witness.

7. As the genuineness of the other documents was admitted by the accused, therefore, the prosecution thereafter closed the evidence and the statement of the accused under Section 313 Cr.P.C. was recorded. The accused persons did not adduce any evidence in their defence.

8. The learned trial court, after hearing learned counsel for the parties and having perused the entire evidence on record convicted the accused - Nand Kishor under Section 307 I.P.C. and thereon sentenced him for rigorous imprisonment for 2 years vide judgment and order dated 14.02.1986.

9. Feeling aggrieved by the impugned judgment and order, the convict Nand Kishor preferred the appeal before the Allahabad High

Court, which has been transferred to this court after creation of new State of Uttaranchal, for decision.

10. Heard learned counsel for the parties and perused the record.

11. Learned counsel for the appellant has first of all argued that the accused was aged less than 16 years on the date of occurrence, therefore, he could not have been tried by the Sessions Judge and the imprisonment could not have been awarded against him.

12. Learned counsel for the appellant has invited my attention towards some documents which have been produced by the parties before the trial court in order to show that the age of the accused was in fact less than 16 years on the date of the occurrence.

13. It has been submitted that the trial court itself has mentioned the gate of the accused in the statement under Section 313 Cr.P.C. as 15 years. My attention has also been invited towards the judgment of the trial court wherein the trial court while hearing the accused/appellant on the question of sentence has mentioned the age of the accused as 15 years on the date of delivery of judgment. My attention has also been invited towards the documents filed by the accused before the court below in order to show his date of birth which appears to be 30.05.1971.

14. I have given my anxious consideration advanced by the learned counsel for the accused/appellant. It is evidently clear that the accused was less than 16 years of age on the date of the incident. His age was found to be 15 years on the date of the delivery of judgment as well as on the date when the statement under Section 131 Cr.P.C. was recorded. Therefore, it is quite apparent that when the incident took place

in the year 1983, the age of the accused/appellant might be approximately 13 years.

15. Therefore, the papers available before the court below make the things evidently clear that the accused/appellant was juvenile on the date of the occurrence. Hence his case should not have been dealt with as a Sessions trial.

16. The Hon'ble Supreme Court in the case reported in *AIR 1981 Supreme Court Page 2037 (supra)* has clearly observed that *"Section 27 of the Cr.P.C. is not 'a specific provision to the contrary' with the meaning of Section 5 of the code."* It has further observed that "what Section 27 contemplates is that a child under the age of 16 years may be tried by a Chief Judicial Magistrate or any Court specially empowered under the Children Act, 1960.

17. The Hon'ble Apex Court has further discussed the relevant provision of the Cr.P.C. 1973 with which they were directly concerned in order to decide this point and those provisions are as follows:-

> *"Section 4 reads:*
>
> *(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*
>
> *(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with accordingly to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."*

Section 5 reads:

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Section 27 reads:

Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960, or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders."

18. The Hon'ble Apex Court on the basis of the aforesaid provision has opined that "Section 27 is not a specific provision to the contrary within the meaning of Section 5 of the Court. The intention of the Parliament was not to exclude the trial of the delinquent children for offences punishable with death or imprisonment for life, inasmuch as Section 27 does not contain any expression to the effect "notwithstanding anything contained in any Children Act passed by and State Legislature."

19. In view of the aforesaid observation made by the Hon'ble Supreme Court, I am of the view that what Section 27 contemplates is that a child under the age of 16 years may be tried by a Chief Judicial Magistrate or any Court specially empowers under the Children Act, 1960.

20. I, thus of the view that Section 27 of the Code of Criminal Procedure is merely an enabling provision which does not express any contrary intention to undo the saving provided in Section 5 of the Code.

21. In view of the above, I allow the appeal and set aside the conviction and sentence imposed upon the accused/appellant and quash the entire trial.

22. I accordingly directed that the appellant shall be dealt with in accordance with provision of U.P. Children Act (1 of 1952).

23. The record of the court below be returned immediately in order to expeditious disposal of the case.

(B.C. Kandpal, J)

21.04.2005
ASWAL